

EXHIBIT 9

DATE 2/12/09

HB 489

Montana Code Annotated - 2007

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46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)

When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor or defendant may file a petition to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served one-half of the sentence and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant has served two-thirds of the time suspended; and

(ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The court may hold a hearing on the petition on its own motion or upon request of the prosecutor or the defendant.

(3) The court may grant the petition if it finds that:

(a) termination of the remainder of the sentence is in the best interests of the defendant and society;

(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and

(c) the defendant has paid all restitution and court-ordered financial obligations in full.

History: En. Sec. 1, Ch. 515, L. 2007.

Provided by Montana Legislative Services



PROBATION AND PAROLE BUREAU STANDARD OPERATING PROCEDURES

Procedure No.: P&P 60-3	Subject: CONDITIONAL DISCHARGE FROM SUPERVISION / TERMINATION OF DEFERRED AND SUSPENDED SENTENCES	
Reference: <u>46-18-208, MCA; 46-23-1011(5)(a), 46-23-1021(6)(a), MCA; ARM 20.25.704</u>		Page 1 of 4
Effective Date: 06/01/01		Revision Dates: 12/10/01; 06/17/02; 01/13/03; 03/14/03; 12/31/08
Signature / Title: /s/ Ron Alsbury		

I. BUREAU DIRECTIVE:

Probation & Parole Officers will follow established procedures for requesting a Conditional Discharge from Supervision for probationers and parolees. This procedure describes the Officer's role in supervising the conditionally discharged offender.

II. DEFINITIONS:

Conditional Discharge From Supervision (CDFS) – A level of supervision recommended by a Probation & Parole Officer (Officer) and approved by the district court or Board of Pardons & Parole. The recommendation is submitted prior to the expiration of an offender's sentence upon the offender successfully fulfilling probation or parole conditions of supervision and succeeding in reducing their risk.

III. PROCEDURES:

A. CONDITIONAL DISCHARGE FROM SUPERVISION

1. A district court judge and the Board of Pardons and Parole (BOPP) may conditionally discharge a probationer or parolee from supervision upon recommendation of the supervising Officer if it is determined that such conditional discharge is in the best interests of the offender and society and will not present unreasonable risk of danger to the victim of the offense. Probationers must also have paid all restitution and court-ordered financial obligations in full.

All offenders granted a CDFS must continue to comply with all standard and special conditions set by the Department of Corrections, the court, and/or Board of Pardons and Parole except for the conditions for travel and monthly reporting. Offenders on CDFS must:

- a. To report any address or employment change immediately to their supervising Officer, providing proof of new residence and/or employment;
- b. To report immediately any arrests or negative contact with law-enforcement;
- c. To fill out an annual written report on the anniversary date of their CDFS, providing proof of residence and employment;
- d. If a Montana resident, to not reside out-of-state without Interstate Compact Application or approval from Interstate to move. (Interstate offenders granted a CDFS while living out-of-state are not required to receive approval from Interstate when moving.)
- e. Offenders continue to be subject to search upon reasonable suspicion that the offender has violated any conditions and/or laws.

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AND SUSPENDED SENTENCES**

Parolees convicted of non-violent offenses may be recommended for a CDFS after serving a minimum of time on parole of:

- Three (3) consecutive years of satisfactory parole adjustment; or
- Two (2) consecutive years of exemplary parole adjustment

2. Pursuant to statute, the Probation & Parole Bureau (Bureau) may also recommend an offender for CDFS if the workload is above the level of resources available to appropriately supervise offenders.
3. **Sexual and Violent Offenders shall not be given a CDFS without the approval of the Regional Administrator (RA) and Bureau Chief. SO/VO offenders out of state shall also be reviewed when applying for a CDFS.**

Parolees convicted of violent offenses may be recommended for CDFS after serving a minimum time on parole of:

- Four (4) consecutive years of satisfactory parole adjustment; or
- Three (3) consecutive years of exemplary parole adjustment.

4. Interstate parole cases granted a CDFS will be managed by the originating Probation & Parole Office.
5. If the offender violates CDFS terms – keeping laws, ordinances and/or conditions imposed, and it is determined to be in the best interest of society and the offender, the offender can be returned to active supervision or a correctional facility by the court or BOPP upon request of the supervising agency.

PROCEDURE:

RESPONSIBILITY:

1. REQUESTING A CDFS

- a. *P&P 60-3(A) Request for Conditional Discharge From Supervision* is completed and submitted to the RA or Probation & Parole Officer II (POII), and to the Deputy Compact Administrator for interstate cases, for review and approval. The *Request* will contain the following:
 - i. information on the instant offense & criminal history,
 - ii. offender's employment history while under supervision,
 - iii. information regarding the offender's general attitude,
 - iv. the supervision history including length of supervision period and the offender's involvement in treatment,
 - v. verification of compliance with P&P, court-ordered, and/or BOPP conditions,
 - vi. payment of restitution, fees and fines, and
 - vii. offender's risk assessment.
- b. Upon approval of *P&P 60-3(A) Request*:

P&P Officer
RA or POII

Parole Cases, the *Request* is forwarded to the BOPP for consideration. If approved, the BOPP will prepare an order for distribution.

P&P Officer
BOPP

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Probation Cases, both *P&P 60-3(A) Request* and *P&P 60-3(B) Recommendation for Conditional Discharge From Supervision* are completed and presented to the County Attorney. Upon agreement with the County Attorney, both *P&P 60-3(A) Request* and *(B) Recommendation* are submitted to the district court judge. If the judge approves, he/she will sign the Order on the bottom of *P&P 60-3(B) Recommendation*.

P&P Officer
County Attorney

- c. When the offender is on **parole but has probation time** to follow, the *Request* and *Recommendation* are presented to the judge first. Upon the judge's approval, the forms are then forwarded to the BOPP.

P&P Officer
County Attorney
BOPP

2. SUPERVISION OF PROBATIONER/PAROLEE

- a. Upon notification that a CDFS is granted, Officer notifies the offender using *P&P 60-3(C) Conditional Discharge Letter* and has offender sign. *Provides P&P 60-1(G) Offender Monthly Report* for offender to use for required annual reporting.

P&P Officer

- b. Officer will notify any victims that have registered with the Department for notification of offender status.

P&P Officer

- c. The Officer will perform an annual record check (CJIN and NCIC) on the anniversary date of the offender's CDFS to assure the offender has remained law-abiding.

P&P Officer

- d. Any address or employment change provided by the offender must include proof of change.

P&P Officer

- e. The Officer may conduct a search, or may authorize a law enforcement agency to conduct a search, of the offender's person, vehicle, and residence upon reasonable suspicion that the offender has violated any conditions and/or laws.

P&P Officer

- f. A written response to the offender's annual report is completed using *P&P 60-3(D) Written Response to Offender's Annual Letter*

P&P Officer

- g. The offender's conditionally discharged file is maintained in the office of the last assigned P&P Officer.

P&P Officer

- h. The offender is reported as a CDFS on the workload analysis.

P&P Officer

3. REVOKING A CDFS

- a. If an offender violates requirements of the CDFS warranting revocation of the CDFS, the supervising Officer completes *P&P 60-3(E) Request to Revoke Conditional Discharge from Supervision* and submits to the judge or BOPP.

P&P Officer

**Subject: CONDITIONAL DISCHARGE FROM SUPERVISION/TERMINATION OF DEFERRED
AND SUSPENDED SENTENCES**

B. EARLY TERMINATION OF A DEFERRED OR SUSPENDED SENTENCE

When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor or offender may file a petition to terminate the time remaining on the sentence if:

1. Deferred Sentences: The offender has served one-half of the deferred sentence and has demonstrated compliance with supervision requirements.
2. Suspended Sentences: The offender has served two-thirds of the time suspended and has been granted a CDFS and has demonstrated compliance for a minimum of 12 months. Demonstrating compliance is completion of all court-ordered conditions including treatment mandates, restitution, court-ordered fines, etc.

The court may hold a hearing on the petition on its own motion or upon request of the prosecutor or the offender.

The court may grant the petition if it finds that termination of the remainder of the sentence is in the best interests of society and the offender; termination will not present an unreasonable risk of danger to the victim of the offense; and the offender has paid all restitution and court-ordered financial obligations in full.

Officers may utilize *P&P 60-3(F) Petition for Termination of Deferred or Suspended Sentence* to assist an offender who has met the criteria to petition the court for termination of a deferred or suspended sentence.

IV. CLOSING:

Questions concerning this procedure shall be directed to the RA or designee.

Forms

<u>P&P 60-3(A)</u>	<u>Request for Conditional Discharge From Supervision</u>
<u>P&P 60-3(A-1)</u>	<u>Sample of Request</u>
<u>P&P 60-3(B)</u>	<u>Recommendation for Conditional Discharge from Supervision</u>
<u>P&P 60-3(C)</u>	<u>Conditional Discharge Letter</u>
<u>P&P 60-3(D)</u>	<u>Written Response to Offender's Annual Letter</u>
<u>P&P 60-3(E)</u>	<u>Request to Revoke Conditional Discharge from Supervision</u>
<u>P&P 60-3(F)</u>	<u>Petition for Termination of Deferred or Suspended Sentence</u>



STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
ADULT PROBATION & PAROLE

REQUEST FOR CONDITIONAL DISCHARGE FROM SUPERVISION

REPORT TO: _____ DATE: _____
JUDICIAL DISTRICT: _____
NAME: _____ DOC ID #: _____
DATE OF SENTENCE: _____ TERMINATION DATE: _____
CAUSE #: _____ STATUS: _____
CRIME: _____
SENTENCE: _____
PRESENT ADDRESS: _____

Comment [I1]: Put in Judge Name or BOPP

LEGAL HISTORY

Comment [DOC2]: In this section include background information on conviction(s), such as date of sentencing, sentencing judge, Judicial District, County and City, length of sentence (include deferred/suspended/DOC/MSP). If paroled, include date of parole. Also, include the date the conditions of supervision were signed by the offender. If not signed, please note.

PROGRESS AND CONDUCT

RECOMMENDATIONS

This offender will continue to be under the supervision of the Probation & Parole Bureau and under the jurisdiction of the District Court or the Board of Pardons and Parole; therefore, all conditions of probation and parole, except for the conditions of travel and monthly reporting, are still in effect. Under CDFS, this offender will: (1) Submit annual reports on a form provided by the Bureau; (2) Report any and all changes in residence or employment immediately and submit proof of the changes; (3) Obey all laws and immediately provide notification of any arrests or negative contact with law enforcement and the disposition of any arrests; (4) Continue to be subject to search upon reasonable suspicion of violation of conditions and/or law; and (5) Relocate to another state through the Interstate Compact Unit.

Comment [I3]: Listed are the conditions of the Conditional Discharge. Officer should add any other recommendations as necessary. See Sample.

Respectfully submitted,

Approved by,

Probation/Parole Officer Signature

Regional Administrator/POII Signature

P&P Officer Name: _____

RA/POII Name: _____

Address: _____

Address: _____

Telephone #: _____

Telephone #: _____

MCA 46-23-1011 (5)(a) - Probationer

MCA 46-23-1021 (6)(a) - Parolee

cc: File